

AN ACT

To further amend title 52 of the Code of the Federated States of Micronesia, as amended, by further amending sections 505, 506 and 507, as enacted by Public Law No. 9-155, for the purpose of adding criteria for the government early retirement programs, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

Section 1. Section 505 of title 52 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 9-155, is hereby amended to read as follows:

"Section 505. Eligibility; procedures.

Eligibility for the benefits under this chapter shall be determined as follows:

(1) Within 60 days of the end of the First Regular Session of the Tenth Congress of the Federated States of Micronesia, before or during which session the President shall have submitted a National Government Restructuring Plan for review and action by the Congress, the President of the Federated States of Micronesia for the executive branch, the Chief Justice of the Supreme Court of the Federated States of Micronesia for the judiciary branch, the Speaker of the Congress of the Federated States of Micronesia for the Congress, and the chief executive officer of each agency of the National Government shall submit to the President, or his designee, a list for their respective branch or agency of the National Government. Each list may be updated from time to time and shall include each position:

(a) Ineligible for inclusion in the program. A position shall be ineligible if such position is exempt by law from the provisions of the Public Service System Act, except that such ineligibility shall not apply to the occupant of a position included in section

117(8) of this title if such occupant is not re-employed by the National Government in a section 117(8) position or a position that is a successor to a section 117(8) position after the enactment of a law reducing the number of executive branch departments and offices; or provides essential public services and if abolished would cause the National Government to fail to provide such essential public services;

(b) Which shall be terminated because such position is to be abolished; and

(c) Which may be eligible for inclusion in the program.

(d) Notwithstanding subsection 505(1)(a) of this section, a position that is exempt by law from the provisions of the Public Service System Act may be eligible for inclusion in the program if the appropriate official described in subsection 505(1) of this section and the Secretary of Finance determine:

(i) that such position does not provide essential public services and if abolished would not cause the National Government to fail to provide essential public services;

(ii) that the employee who holds the position could make a significant contribution to the private sector; and

(iii) that allowing the employee to participate in the program will result in significant long-term savings to the National Government because the position will be abolished and need not be re-established through a successor position.

(d) Nothing in this title shall be construed as preventing an employee who holds a position that is exempt by law from the provisions of the Public Service System Act from participating in the program through section 505(4) of this title.

(2) A permanent employee in a position which shall be terminated under section 505(1)(b) of this chapter shall be automatically deemed a participant in the program subject only to the abolishment of the position. Such abolishment may occur at anytime during the program period but not less than 90 days after the employee receives notice that the position is to be abolished, except that such 90-day period can be waived by the employee.

(3) A permanent employee in a position eligible for inclusion in the program under section 505(1)(c) of

this chapter may participate in the program by submitting a written application to the Office of Administrative Services and if:

(a) There are funds available in the program;

(b) Long-term cost savings would be achieved by the employee's participation in the program; and

(c) The respective branch or agency of government may abolish the position without compromising essential public services or such position may be filled by a permanent or probationary employee and such employee's previous position is abolished.

(4) A permanent employee holding a position identified as 'ineligible' for the program under section 505(1)(a) of this title may become eligible for inclusion in the program if he submits a written application and:

(a) A person who is eligible for the program through section 505(1)(b) or (c) agrees, in writing, to become employed in the ineligible position;

(b) The head of the branch or agency containing that ineligible position agrees, in writing, to employ that eligible person in the permanent employee's ineligible position; and

(c) sufficient funds are available in the program."

Section 2. Section 506 of title 52 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 9-155, is hereby amended to read as follows:

"Section 506. Compensation.

(1) Subject to the availability of funds, an employee eligible for participation in the program and less than 60 years of age may choose to receive either:

(a) a lump sum payment equal to 48 bi-weekly base salary payments; or

(b) 52 bi-weekly base salary payments.

(2) (a) Subject to the availability of funds, an employee eligible for participation in the program, who is more than 55 years of age and not yet eligible for FSM Social Security Administration (hereinafter SSA) retirement benefits, may retire and may choose to receive the benefits described in section 506(1)(a) or (b), or may choose to receive a lump sum payment equaling 6 base salary pay periods and a monthly amount equal to the monthly SSA retirement benefits that the person would have received if he had been 60 years of age when his employment with the National Government ceased due to his participation in

the Early Retirement Program. Such payments shall terminate upon the person reaching the age of 60 or becoming eligible for SSA retirement benefits, whichever occurs first. The Secretary of the Department of Finance may enter into an agreement with the SSA authorizing the SSA to administer the payments under this subsection. The agreement may also provide for the collection of reasonable administrative fees by the SSA.

(b) If a participating employee disputes National Government records that indicate what his age is, and if resolution of the dispute would control the amount of the benefits that the worker would receive under section 506, the worker may request a determination of the dispute by the Director of the Social Security Administration (hereinafter, 'the Director'). Such a request must be in writing. The Director must resolve the dispute promptly, and he may receive any evidence that he deems appropriate in resolving such a dispute. The Director must make written findings explaining his evaluation of the evidence presented to him and explaining his ultimate resolution of the dispute. The Director must also

provide a copy of those written findings to the employee in question.

(c) After each eligibility list has been determined, it shall be promptly transmitted to the Director of Social Security, who shall promptly deliver written notification to each worker who is between 53 and 59 years of age and whose position is described in section 505 (1)(c), of the following: how many 'quarters of coverage' the worker has accumulated for the purposes of Social Security benefits, whether that number is sufficient to entitle the worker to Social Security retirement benefits at age 60 and, if not, how many more 'quarters of coverage' the employee would have to accumulate to become entitled to such benefits. The written notification shall be given to the employee both in English and in his indigenous language. The director of Social Security shall make reasonable efforts to assure that the employee signs a statement indicating that he has read the written notification and understands its contents.

(d) After each eligibility list has been determined, it shall be promptly delivered to the Director of the Office of Administrative Services, or his successor, who shall promptly deliver written

notification to each worker whose position is described in section 505(1)(c) of this title that if he chooses to take the benefits of the program, he and his dependents would have the right to participate in the National Government Employee's Health Insurance Plan if he pays 100 percent of the premiums for himself and his dependents to the plan. This written notification shall be given to the employee both in English and in his indigenous language. The Director of the Office of Administrative Services, or his successor, shall make reasonable efforts to assure that the employee signs a statement indicating that he has read the written notification and understands its contents.

(3) Subject to the availability of funds, an employee who is more than 60 years of age and eligible to receive SSA retirement benefits and who is otherwise eligible to participate in the program, shall receive a lump sum payment equal to 6 bi-weekly base salary periods.

(4) Subject to the availability of funds, and notwithstanding any other provisions of this chapter, employees of the National Government who participate in the program based upon their eligibility pursuant to

section 505(1)(a) of this chapter may choose to receive:

(a) a lump sum benefit equal to 48 bi-weekly base salary payments; or

(b) 52 bi-weekly base salary payments; unless the number of positions that were held by such participants exceeds the number of positions included in section 117(8) of this title that are abolished pursuant to enacted law that reduces the number of executive branch departments and offices and are not re-established by that enacted law as successor positions, in which event such participants may choose to receive either:

(c) a lump sum benefit that is equal to a pro rata share of \$52,000 multiplied by the number of section 117(8) positions that are abolished and are not re-established through successor positions by the enacted law described in subsection 4(b) of this section; or

(d) 52 equivalent bi-weekly payments that, in the aggregate, amount to 1.083 times the amount described in subsection 4(c) of this section.

(5) The following adjustments shall be made from each payment due to an employee:

(a) Any advance annual or sick leave owed by the employee;

(b) Any salary advance;

(c) Any per diem or other travel advance including outstanding travel authorizations; and any other adjustment which the employee may owe to the National Government, or which the National Government may owe to the employee.

(d) If authorized by the employee in writing, amounts requested by the employee to be deducted from compensation received pursuant to subsection (1)(b) of this section, and remitted to a third party, provided that no more than two such remittances shall be permitted for each employee at any one time and that each such remittance must be in effect for at least six months, unless otherwise provided by law. A remittance under this subsection shall be binding upon the employee in accordance with the terms of the request therefor, including but not limited to any prohibition on canceling the remittance without the consent of the third-party payee, provided that the terms of the remittance are otherwise in accordance with applicable law, including but not limited to usury laws.

(6) Compensation received by an employee pursuant to this chapter or received by a State employee in accordance with a similar severance program shall be exempted from the:

(a) Provisions of sections 901 and 902 of title 53 to the extent that such compensation shall not be deemed wages received by the employee;

(b) Provisions of section 121 of title 54 to the extent that such compensation shall not be deemed wages or salaries received by the employee; and

(c) Provisions of section 603(6) of title 53 to the extent that such compensation shall not be deemed dollars earned in a quarter by the employee."

(d) Subsection 506(6) of this title shall be retroactive to the date that the employee received compensation pursuant to this chapter or a similar State severance program.

(7) If a participating employee dies, his entitlement to compensation under the program shall survive and the remainder shall be paid to persons or entities in accordance with the general law of descent and distribution or in accordance with customary law if the applicable jurisdiction does not have general law of descent and distribution."

Section 3. Section 507 of title 52 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 9-155, is hereby amended to read as follows:

"Section 507. Ineligibility for re-employment. Any employee who receives compensation under the program shall not be eligible for re-employment in any capacity by the National Government or any agency of the National Government prior to September 30, 2001, except that such ineligibility shall not apply to program participants who are re-employed by the National Government in the following positions:

(1) members of the Congress of the Federated States of Micronesia;

(2) the President and Vice President of the Federated States of Micronesia; and

(3) persons appointed to any positions by the President with the advice and consent of the Congress of the Federated States of Micronesia, except that program participants who receive compensation pursuant to section 506(4) of this chapter shall not be eligible for re-employment by the National Government in any position appointed by the President with the advice and consent of Congress prior to September 30, 2001."

Section 4. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

December 12, 1997

/s/ Jacob Nena
Jacob Nena
President
Federated States of Micronesia

